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December 29, 1989

MEMORANDUM

SUBJECT: Use of Netting Credits

FROM: John Calcagni, Director  
Air Quality Management Division (MD-15)

TO: Bruce P. Miller, Chief  
Air Programs Branch, Region IV

This memorandum is in response to your October 27, 1989 memorandum which asked several questions concerning the Environmental Protection Agency's (EPA's) position on netting. Specifically, you asked the following questions:

1. Can "leftover" contemporaneous emissions reductions be used in future netting transactions?
2. If so, can these emissions credits be sold or otherwise be used by a separate facility with a different, major, standard industrial classification (SIC) number under any circumstances?
3. If a source is allowed to use the leftover emissions credits in the future, is the 5-year netting time frame opened for all pollutants, even though a modification may be major for only a limited number of pollutants?

The following response is based on our reading of the Federal regulations. However, States with federally approved prevention of significant deterioration (PSD) State implementation plans are free to follow a more stringent interpretation of their regulations.

Your first question asked whether a source could use "leftover" emissions reduction credits from a netting transaction in future netting transactions. We assume by "leftover" emissions reductions you mean some portion of an emissions decrease that does not appear to be fully utilized in allowing a source to net out of review. As explained below [and in the January 12, 1989 letter (see attached) from Ed Lillis to Michael Hayes], the procedure we recommend for considering emissions increases and decreases in a netting calculation does not result in "leftover" emissions credits, since emissions increases and decreases are considered in their entirety.

The pertinent PSD criteria for emissions increases and decreases to be creditable for netting transactions is CFR 40 Part 52.21(b)(3)(iii) or Part 51.166(b)(3)(iii), which states that the emissions increases and decreases are creditable:

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b)... "if the reviewing authority has not relied on it (e.g., an emissions decrease) in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs." [NOTE: EPA's policy is to interpret the permit to be a PSD permit.]

There are situations, such as when a source nets out of review, when

the permitting authority does not rely on creditable emissions increases or decreases "in issuing a PSD permit." For example, when a source nets out of review, no PSD permit is issued. As such, the reviewing authority has not relied on any creditable emissions increases or decreases in issuing a permit, so the emissions increases and decreases are still available for future applications.

For example, a major source proposes to replace a boiler that emits 30 tons per year (tpy) of sulfur dioxide (SO<sub>2</sub>) with a new unit that has a potential to emit 50 tpy SO<sub>2</sub>. Also, the source shut down a 40 tpy SO<sub>2</sub> unit 3 years prior to the proposed modification. As such, the netting equation for the example is:

$$+50 \text{ tpy (proposed increase)} \text{ minus } 30 \text{ tpy (current shutdown)} \text{ minus } 40 \text{ tpy (previous shutdown)} = -20 \text{ tpy SO}_2$$

Note that these shutdowns, as all other decreases, must be federally enforceable in order to be creditable. Consequently, the source nets out of review, and no PSD permit is issued.

We do not view the -20 tpy SO<sub>2</sub> that results from the netting calculation as "leftover" credit. Rather, we view each of the contemporaneous and otherwise creditable emissions increases and decreases considered by the source in netting out of review as still being fully available, and must therefore be included in the next netting transaction at the source. To further illustrate, suppose the source in the example plans to add another new boiler in 3 years, which will increase SO<sub>2</sub> emissions by 50 tpy without replacing any existing units. A new net emissions increase must be calculated. The 40 tpy reduction that was creditable in the previous netting transaction will have passed out of the contemporaneous window, so it is no longer available. The new net emissions increase is calculated as follows:

$$+50 \text{ tpy (proposed increase)} \text{ plus } 50 \text{ tpy (previous increase)} \text{ minus } 30 \text{ tpy (previous shutdown)} = 70 \text{ tpy SO}_2$$

In this case, the source does not net out of review and must get a PSD permit.

Where a source is not able to net out of review, any emissions increase or decrease used in the netting equation to determine source applicability must also be used in its entirety in the subsequent air quality impact analysis. In this manner, a reviewing authority relies on the full emissions increase or

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decrease in determining whether the proposed project would or would not cause, or contribute to, a violation of an increment or ambient standard. At this point, these increases and decreases are no longer creditable.

Your second question asked if "leftover" credits existed, could those credits be sold or otherwise used by a separate facility (with a different major SIC number) under any circumstances. As a hypothetical example, you asked if a new major source, with a different SIC number and under separate ownership, located on the property of another source, could it use the "leftover" netting credits under any circumstances. The answer to this situation is no, since netting is source-specific. Emissions reduction credits cannot be sold to, or used by, separate sources for PSD netting purposes, even if they are collocated at the same site.

The answer to your third question is no. It was addressed in my September 18, 1989 memorandum to William B. Hathaway, Director of the Air, Pesticides, and Toxics Division, EPA Region VI, a copy of which is attached. Please refer to the response to question 2 in that memorandum.

If you have any questions, please contact Gary McCutchen or Dennis Crumpler of my staff at FTS 629-5592 or FTS 629-0871, respectively.

2 Attachments

cc: G. Foote, OGC  
Air Branch Chief, Regions I-III, V-X  
New Source Review Contacts